

*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.4911 of 1997

% 29-12-2004

V.Lalitha d/o.V.Y.Somayajulu

and another .. Petitioners

Vs.

\$ State of Andhra Pradesh, rep.by its

Secretary to Government, Social Welfare

Department, Secretariat, Saifabad,

Hyderabad.

and others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for the petitioners : Sri D.V.Sitharam Murthy

^ Counsel for the respondents : Government Pleader for Social Welfare

?CASES REFERRED :

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 4911 of 1997

Between:

1. V.Lalitha D/o.V.Y.Somayajulu, aged 22 years,
r/o. Koyyuru, Visakhapatnam District.
2. V.B.Subramanyam s/o. V.Y.Somayajulu,
aged 21 years, R/o. Koyyuru,
Visakhapatnam District. .. Petitioners

AND

1. State of Andhra Pradesh, rep. by its Secretary,
to Government, Social Welfare Department,
Secretariat, Saifabad, Hyderabad.
2. The Mandal Revenue Officer, Koyyuru,
Visakhapatnam District.
3. The Chief Materials Manager, Materials
Management Department, Visakhapatnam
Port Trust, Visakhapatnam.
4. The Principal, Zonal Staff Training College,
A.P. State Road Transport Corporation,
Vizianagaram District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court in the interest of justice be pleased to issue an appropriate writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the 2nd respondent in limiting the Social Status Certificate dated 26-10-1996 issued to the petitioners as being valid for educational purpose only as illegal, arbitrary and unconstitutional and issue a consequential direction that the petitioners are entitled to be treated as Bhagatha Caste which is a

Scheduled Tribe for all purposes including education, service etc.

Counsel for the Petitioner:MR.D.V.SITARAMAMURTHY

Counsel for the Respondent Nos.1 & 2 : GP FOR SOCIAL WELFARE

Counsel for the Respondent No.3 : Mr.K.Srinivasa Murthy

Counsel for the Respondent No.4 : None appeared

The Court made the following :

ORDER:

The petitioners filed the present Writ Petition for issuance of an appropriate writ, order or direction more in the nature of writ of mandamus declaring the action of the 2nd respondent in limiting the social status certificate dated 26-10-1996 issued to the petitioners as being valid for educational purpose only as illegal, arbitrary and unconstitutional and issue consequential direction that the petitioners are entitled to be treated as Bhagatha caste which is a Scheduled Tribe for all purposes including education, service etc., and pass such other suitable orders.

Sri D.V.Sitharam Murthy, the learned Counsel representing the respondents had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and also certain interim orders which were made and subsequently vacated. The learned Counsel also had drawn the attention of this Court to the caste certificate issued by the Mandal Revenue Officer, Koyyuru and would contend that limiting the same only for educational purpose definitely

cannot be sustained.

Per contra the learned Government Pleader for Social Welfare had drawn the attention of this Court to Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of issue of Community Certificates Act, 1993 and the Rules made thereunder and would submit that in view of the same liberty may be given to the petitioners to approach the Competent Authority under the Act and the Rules for the purpose of getting regular social status certificate for other purposes also since the prior certificate was made valid for educational purpose only.

Heard the Counsel.

The petitioners state that their father belongs to Brahmin caste and their mother belongs to Bhagatha caste, a recognized Scheduled Tribe under the Constitution (Scheduled Tribe) Order 1950 which is shown at Sl.No.2 in the said order. It is also the case of the petitioners that after the marriage their father was excommunicated and the family had severed the relationship with the relatives of their father and they were born at Koyyuru at their mother's place and Koyyuru Mandal in Visakhapatnam District is an Agency Area and they were brought up at Koyyuru by their mother and her parents. It is also stated that the 1st respondent issued G.O.Ms.No.371, Employment and Social Welfare (B2) Department dated 13-4-1976 extending the

benefit available to SCs., STs. and B.Cs. to the children of inter-caste marriages as per directions in letter No.39/37/73-SCTI dated 4-3-1975 issued by the Under Secretary, Ministry of Home Affairs, Government of India, providing the basis for acceptance of a person as a member of Scheduled Tribe. It is also stated that the petitioners were shown as belonging to Scheduled Tribe in their school records and an application was made for issuance of social status certificate and the 2nd respondent conducted necessary investigation and issued certificate stating that the petitioners belong to Bhagatha caste, a Scheduled Tribe. Several details relating to the same had been narrated.

The main grievance ventilated by the writ petitioners is that limiting the caste certificate only for the purpose of education and not for other purposes cannot be sustained. It is stated that they made several representations in this regard. It is also stated that the 1st petitioner should be permitted to attend the interview for the post of Issue Clerk in Materials Management Department, Visakhapatnam Port Trust, Visakhapatnam and a direction was sought to the 3rd respondent to permit the 1st petitioner to attend the said interview meant for Scheduled Tribe on the basis of the social status certificate dated 26-10-1996. It appears some interim order was passed and subsequent thereto the same had been vacated.

In the counter affidavit filed by the 2nd respondent, specific stand was taken that the petitioners are children of a Brahmin father and a Scheduled Tribe mother belonging to Bhagatha caste and they have enjoyed the mother's status for educational purpose as per the instructions issued by Government of Andhra Pradesh in G.O.Ms.No.371, Employment and Social Welfare Department dated 13-4-1976. It is also stated that on the representation made by the petitioners' mother, the District Collector, Visakhapatham directed the Mandal Revenue Officer to enquire into the matter and the enquiry had been initiated as per the Commissioner's letter dated 6-9-1997 and in view of the pendency of the Writ Petition the enquiry could not be proceeded with. Further a specific stand was taken after narrating other details that the petitioners are always at liberty to approach the Competent Authority with relevant material for necessary certificate and the Government had issued G.O.Ms.No.58 dated 19-5-1996 for issuance of permanent caste certificate.

The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993, Act No.16 of 1993, hereinafter in short referred to as "Act", is an Act to consolidate the issue of Community Certificates relating to persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and for matters connected therewith or incidental thereto. Section 21 of the Act dealing with Transitional

Provisions reads as hereunder :

“A community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act shall, unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of this Act.”

Section 3 of the Act dealing with Application of a Community

Certificate reads as hereunder :

1. Any person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes may in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes either for any public appointment or for admission into any educational institution in the State or outside the State for the students of the State or any other benefit under any special provisions made under clause (4) of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or for elective posts in the Co-operative Institutions, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of a community certificate.
2. Any person belonging to a Scheduled Tribe may, for the purpose of claiming any benefit or protection meant for Scheduled Tribes under any notification, direction or regulation made under the Fifth Schedule to the Constitution of India or under any Act, Rule, Regulation or Order for the time being in force in the Scheduled Areas, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of community certificate.

Explanation :

For the purposes of this section and Section 13, “Scheduled Areas” means the areas as defined in paragraph 6 of the Fifth Schedule to the Constitution.

Section 4 of the Act dealing with Community Certificate to be issued by competent authority reads as hereunder :

1. The Competent Authority may, on an application made to it under Section 3 satisfy itself about the genuineness or otherwise of the claim made therein and thereafter issue a community certificate within such period and in such form as may be prescribed or reject the application for reasons to be recorded in writing. A certificate in regard to community issued by any person, officer of authority other than the competent authority shall be invalid.
2. Before the issue or rejection of a certificate under subsection (1) the competent authority shall follow such procedure as may be prescribed.

Section 5 of the Act dealing with Cancellation of the false Community Certificate reads as hereunder :

(1) Where, before or after the commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false Community Certificate to the effect that either himself or his children belongs to such Castes, Tribes or Classes, the District Collector may either suo motu or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of the making a representation:

Provided that where an enquiry into the genuineness of a

community certificate issued prior to the commencement of this Act has commenced and is pending at such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section.

(2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government.

In the present case no doubt there is no cancellation of the Certificate as such but the Certificate issued had been limited only for educational purpose. That is the main grievance ventilated by the writ petitioners. The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Rules 1997 were issued in G.O.Ms.No.58, Social Welfare (J), dated 12-5-1997 in exercise of the powers conferred by sub-section (1) of Section 20 of the aforesaid Act. Rule 3 of the Rules dealing with Community, Nativity and Date of Birth Certificates reads as hereunder :

“The Form for issue of Community, Nativity and Date of Birth Certificates is as specified in Form II appended to these Rules”.

Rule 4 of the said Rules dealing with Procedure for Application reads as hereunder :

- a. Every applicant/parent/guardian who belongs to a Scheduled Caste, Scheduled Tribe, Backward Class, desirous of declaring his social status as that of a Scheduled Caste, Scheduled Tribe or a Backward Class, shall submit an application in the prescribed

Form I/II to Competent Authority, well in advance i.e., six months, as far as possible, particularly when seeking admission to the educational institutions or appointment to a post.

- b. If the applicant is a minor, the parent/guardian shall submit the application form as mentioned in clause (a) above.

Rule 5 of the Rules dealing with Procedure for Verification specifies as hereunder :

- a. On receipt of the application the Competent Authority or any officer authorized by him in this regard shall ensure that the applicant has furnished complete information in all the columns of Form I/II and, shall then give the acknowledgement slip as appended in Form I/II, in token of having received the application. The Competent Authority shall then verify the information/documents/evidence furnished by the applicant/parent/guardian in Form I/II. If the Competent Authority is satisfied with the correctness of the information/documents/evidence furnished by the applicant/parent/guardian, he shall issue the Community, Nativity and Date of Birth Certificates in Form III within 30 (thirty) days of the receipt of the application in Form I/II. The Competent Authority shall specify in Form III the sub-caste of the SC claimant and the sub-tribe/sub-group of the ST claimant assisted out in Annexure-I appended to these Rules.
- b. If the Competent Authority feels that further enquiry is necessary, he shall then examine the school records, birth registration certificate, if any, and also examine the parent/guardian or applicant, in relation to his/her/their community. He may examine any other person who has the knowledge of the school status of the applicant/parent/guardian, as the case may be. He shall take into account, in the case of Scheduled

Tribes, their anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies/method of burial of dead bodies etc., before issuing the Community, Nativity and Date of Birth Certificates. The Competent Authority shall have power to call for further information and/or collect such evidence/document and also conduct such enquiry as specified in Form IV, if deemed necessary. Notice in Form IV should be issued to the parent/guardian, in case the applicant is a minor, to appear before the Competent Authority.

- c. The notice as specified in Form IV should give clear 15 (fifteen) days, from the date of the receipt of the notice by the parent/applicant/guardian, to attend the enquiry. In no case, not more than 30 (thirty) days from the date of the receipt of the notice, should be allowed.
- d. Where the person on whom a notice in Form IV is served by the Competent Authority fails to respond on the date mentioned therein, the Competent Authority may reject or confirm the claim of the person based on the document/evidence available with the Competent Authority (furnished while applying in Form I/II). He may also take into account any other material/evidence/documents gathered by him in that particular case. The Competent Authority shall cause enquiry, following due process of law, to verify the genuineness or otherwise of the information/evidence/documents furnished or recorded, from such persons as called for the enquiry specified in Form IV. He may also cause to collect any other documentary or related evidence about the genuineness or otherwise of the information furnished by the persons called for in the enquiry.
- e. The Competent Authority should give reasonable opportunity to the applicant/parent/guardian to produce evidence in support of their claim. A public notice by the beat of drum or any other convenient mode may be published in the village or locality to which the

applicant/parent/guardian belongs. If any person or association opposes such a claim, opportunity to produce the evidence in person before the Competent Authority may be given to him or her. After giving such an opportunity to that person or association the Competent Authority may make such enquiry as it deems expedient and consider claims of the applicant/guardian/parent vis-à-vis the objections raised by his/her/their opponent.

- f. The Competent Authority shall requisition the services of Mandal Revenue Inspector, Village Development Officer, Village Administrative Officer or such other persons as deemed necessary, to assist him in the enquiry to verify the veracity or otherwise of the community claims made by the applicant/parent/guardian. However the responsibility for issue or rejection of the claim shall rest on the Competent Authority only.
- g. In respect of the tribal communities who are not “traditional inhabitants” of the area of territorial jurisdiction of the “Competent Authority” as specified in column 3 of Annexure I appended to these Rules, the Competent Authority shall make a reference to the District Tribal Welfare Officer concerned to provide such professional assistance available with him or with the Tribal Cultural Research Institute, Hyderabad, to confirm or reject the claim of the applicant.
- h. The Competent Authority shall confirm or reject the claim for the Community, Nativity and Date of Birth Certificate, after conducting the enquiry as mentioned in the paras above, within a period not exceeding 60 (sixty) days from the date of receipt of the application by him in Form I/II.
- i. The Competent Authority, in the cases of doubtful claims, shall refer the matter to the Chairman of the Scrutiny Committee formed at the District level under Rule 8 i.e., Joint Collector of the District, for the recommendations

of the Committee, with regard to the issue of the Community, Nativity and Date of Birth Certificate as applied for by the applicants. On receipt of the recommendations of the Scrutiny Committee, the Competent Authority shall accordingly confirm or reject the claims of the applicants.”

In Annexure-I, Column 1, Bagata caste is shown as Item 4(2) and it is specified in Column 2 that all Mandal Revenue Officers in the State not below the rank of Deputy Tahsildar as the Competent Authorities within the territorial jurisdiction of a Mandal. On a careful reading of the prior certificate issued by the concerned Mandal Revenue Officer and also the stand taken by the petitioners in the affidavit filed in support of the Writ Petition and also the stand taken by the respondents in the counter affidavit, this Court is of the considered opinion that the prior certificate issued had been issued by the Competent Authority only for the limited purpose i.e., educational purpose only. It is needless to say that in the light of the Act and the Rules specified supra, the petitioners may have to approach the Competent Authority by making necessary application as specified therein for the purpose of obtaining a regular social status certificate and on such application made by the petitioners the Competent Authority shall follow the procedure prescribed by the Act and the Rules. In the light of the same, liberty is given to the petitioners to approach the Competent Authority by filing necessary application in accordance with the Act and the Rules and thereupon the Competent Authority is directed to dispose of the matter in accordance with the procedure specified under the Act and the Rules at the earliest point of time. Except giving this direction no other relief

can be granted in the present Writ Petition.

The Writ Petition is accordingly disposed of as specified supra. No order as to costs.

P.S.Narayana.,J

Date : 29-12-2004

L.R. copy to be marked : YES / NO

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REGISTRAR

To

One fair copy to the Hon'ble Mr.Justice P.S.Narayana (for his Lordship's kind perusal)

1. The Secretary to Government,
Social Welfare Department,

Government of A.P.

Secretariat, Saifabad, Hyderabad.

2. The Mandal Revenue Officer, Koyyuru,
Visakhapatnam District.

3. The Chief Materials Manager, Materials
Management Department, Visakhapatnam
Port Trust, Visakhapatnam.

4. The Principal, Zonal Staff Training College,

A.P. State Road Transport Corporation,
Vizianagaram District.

5. 2 C.Cs. to Government Pleader for Social Welfare,
High Court of A.P.,
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6. 2 C.D. copies.

7. 8 L.R. copies

8. The Under Secretary, Union of India, Ministry of Law, Justice and Company
Affairs, New Delhi.

9. The Secretary, A.P. Advocates' Association, Library, High Court Buildings,
Hyderabad.